

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.637 OF 1995

The Municipal Corporation
of Greater Bombay]
]..Appellant
(Ori.Complainants)

Versus

1. Shri.Hussain S.M.]
'Broast Restaurant,]
Gitanjali Co.Operative]
Housing Society, S.V.Rd.]
Bandra (W), Bombay.]..Respondent
(Ori.Accused)
2. State of Maharashtra]..Respondent

.....
Mr.H.C.Pimple, Advocate for the
Appellant
Mr.A.S.Shitole, A.P.P. for the State.
None for respondent no.1.
.....

CORAM: SMT.V.K.TAHILRAMANI, J.

DATE : DECEMBER 1,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant i.e. Bombay Municipal Corporation challenges the judgment and order dated 26th October, 1988 passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai, in Case No. 2535/MH/1984. By the said judgment and order, the learned Magistrate acquitted the respondent no.1 i.e. original accused under

Section 394(1)(e)(i) read with Section 471 of the Bombay Municipal Corporation Act.

2. Briefly stated the prosecution case is as under:

. That on 30th August, 1984 the accused was found carrying a trade of eating house without licence from Bombay Municipal Corporation in the Garage of Gitanjali Housing Society situated at S.V.Road, Bombay. Hence, complaint came to be filed.

3. The particulars of the offence under Sections 394(1)(e)(i) read with Section 471 of Bombay Municipal Corporation Act, were explained to the accused. He pleaded not guilty and claimed to be tried. The defence of the accused is that he had not carried on the trade as alleged by the prosecution. His further defence is that false case is filed against him. After going through the evidence adduced by the prosecution, the learned Magistrate acquitted the respondent-accused of the offences charged. Hence, this appeal.

4. I have heard Mr.H.C.Pimpale, learned advocate for the appellant and Mr.A.S.Shitole, the learned A.P.P. for the State. None appears for the respondent no.1 though served. I have also perused

the record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

5. It is the prosecution case that the accused was carrying on trade of eating house on 30th August, 1984 without licence. However, in the oral evidence of P.W.1 Shri.Jagtap who is a Sanitary Inspector of B.M.C., it has come on record that on 20th August, 1984 the accused was doing trade of eating house without licence. He has stated in detail as to what was seen by him on 20th August, 1984. However, the complaint Exhibit-H shows that the accused was doing trade of eating house on 30th August, 1984. This was one of the reasons for the learned Magistrate to acquit the respondent no.1-accused.

6. Moreover, P.W.5 Uttam Sawant who is the Senior Inspector in B.M.C. has admitted that accused has applied for renewal of licence to 'H' West ward of B.M.C. on 14th January, 1985. The evidence on record indicates that prior to 14th January, 1985 the accused was in possession of valid licence. P.W.4 S.T.Mane has also admitted that accused had made an application for registration of eating house and he has stated that accused was given registration of eating house by the Assistant

Commissioner of Police, Bandra Division, Bombay. P.W.1 Shri.Jadhav is the main witness in this case. He has stated that accused was present in the premises when he visited the same. The owner was sitting at the counter and accepting money from the customers. He has further stated that eatables were being served in the hotel and customers were present. However, his evidence is not specific as to who was accepting the money, whether it was the accused or some other person who was accepting the money from the customers. Similarly, his evidence does not specifically show as to how many customers were there and what was the food being supplied to the customers. He does not specify the names of employees who were serving the food. The learned Magistrate has observed that in order to constitute the eating house, the prosecution is under obligation to prove all these facts. The prosecution should also prove the dealing of cash by customers and accepting the cash by the accused. In the present case, there is no reliable evidence on record to show that the customers gave any amount to the accused. So also P.W.3 Shri.Jadhav, who is the complainant in the present case, has not stated in his evidence as to what food was served in the hotel and that customers had actually paid any amounts for the meals. Looking to the evidence on record, the

conclusion arrived at by the learned Magistrate, appears to be correct.

7. In the instant case, it is not proved which food was prepared or supplied to the public for consumption in the hotel. Similarly, it is not proved beyond reasonable doubt that the accused incurred profit or gain by such transaction. In the absence of these basic ingredients, it has to be held that the prosecution has failed to prove that the accused carried on trade of eating house. Thus, the view taken by the learned Magistrate appears to be a reasonable and possible view.

8. The learned Magistrate has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar)** and **(2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair)**. In the case of **C.Anthony**, the Supreme Court has observed that unless findings of the trial Court are

perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

9. In the circumstances, I find no merit in this appeal and the same is dismissed. The judgment and order of acquittal passed by learned Metropolitan Magistrate, 39th Court, Vile Parle, Bombay in Case No. 2535/MH/1984, is confirmed. The bail bonds of the accused shall stand cancelled.

[SMT.V.K.TAHILRAMANI, J.]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 637 OF 1995

(The Municipal Corporation of Gr.Bombay Vs. Shri.Hussain S.M.
and another)

Office Notes, office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

Mr.H.C.Pimple
Advocate for Appellant
Mr.A.S.Shitole, A.P.P. for State
No.2
None for respondent no.1

CORAM: SMT.V.K.TAHILRAMANI, J.

DATE : DECEMBER 1, 2004

. For the reasons mentioned
separately in the judgment, the
following order is passed:

. The appeal is dismissed. The
judgment and order of acquittal
passed by learned Metropolitan
Magistrate, 39th Court, Vile Parle,
Bombay in Case No. 2535/MH/1984 is
confirmed. The bail bonds of the
accused shall stand cancelled.

(V.K.TAHILRAMANI, J.)